

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Beverly Adkins,

Debtor.

_____ /

Patricia A. Marshall,

Plaintiff,

v.

Beverly Adkins,

Defendant.

_____ /

Case No. 04-52504-R

Chapter 7

Adv. No. 04-4787-R

Adversary Proceeding

Opinion Regarding Plaintiff's Claim for Attorney Fees

At the conclusion of trial, the Court ordered the entry of an order of nondischargeability in favor of the plaintiff, and authorized the plaintiff to submit a statement of attorney fees and the defendant to submit a response. The plaintiff claims attorney fees of \$13,236.25, plus disbursements of \$329.40 pursuant to the Michigan Consumer Protection Act. The defendant objects on the grounds that the plaintiff's claim for attorney fees under that act was not pled in the complaint, nor otherwise asserted until trial.

The record reflects that the plaintiff's claim for attorney fees under the Michigan Consumer Protection Act was neither alleged in the complaint nor specifically asserted in the joint final pre-trial order entered on April 5, 2005. Accordingly, the Court agrees with the defendant that the plaintiff

has waived this claim and that therefore it should be denied. Fed. R. Civ. P. 16(e); *Olsen v. American Steamship Co.*, 176 F.3d 891, 897 (6th Cir. 1999).

It is so ordered.

Steven Rhodes
Chief Bankruptcy Judge

Entered: July 1, 2005

cc: Thomas Morris
Robert Wine

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Judgment

For the reasons stated on the record in open court on April 21, 2005, it is hereby ordered that the debt owing to the plaintiff by the defendant is held nondischargeable pursuant to 11 U.S.C. § 523(a)(2).

For the reasons stated in the Court's opinion entered this date, the plaintiff's claim for attorney fees under the Michigan Consumer Protection Act is denied.

Steven Rhodes
Chief Bankruptcy Judge

Entered: _____
cc: Thomas Morris
Robert Wine